

02-04-2003 04:48pm From-TECHDMRC

IN WITNESS WHEREOF, the Parties have executed and delivered this Schedule as of the Effective Date.

Northwest Arctic Borough School District GCI Communication Corp.


Authorized Signature

Michael Denbury
Printed Name


Authorized Signature

Martin Cary
Printed Name

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Internet Access Service Agreement

This Agreement between GCI Communication Corp., an Alaska corporation, ("GCI") and Northwest Arctic Borough School District ("Customer") sets forth the specific terms and conditions for Internet Access services that GCI will provide to the Customer (hereinafter, "Service Agreement"). This Service Agreement incorporates by reference the general terms and conditions set forth in GCI School Access General Terms and Conditions Agreement No. SAC-06-031. This Service Agreement is entered into as of 3 day of February, 2003 ("Effective Date").

1. The Service

- 1.1 The Internet Access Service (the "Service") provides Customer access to the Internet computer network via a dedicated communications link. Customer may query its own servers, a GCI server or other servers connected to the Internet. GCI will provide a switch, hub or router to connect to Customer's local or wide area network. Internet access may be provided through GCI's or a partner's Internet platform. The Service does not include telephone Internet access service.
- 1.2 The Service includes electronic directory service. The directory service may be accessed and administered through a web interface and via the lightweight directory access protocol ("LDAP"). Other services will use this directory for user authentication.
- 1.3 The Service includes electronic mail ("e-mail") transport and storage services for Customer and Customer's users. Access to the e-mail services is via a web interface, and simple mail transfer ("SMTP"), Internet message access ("IMAP") and post office ("POP") protocols.
- 1.4 The Service includes web-hosting service. The web hosting service provides hard disk storage and supports user authentication, hypertext transfer protocol ("HTTP"), common gateway interface ("CGI"), practical extraction and report language ("PERL"), and FrontPage technologies.
- 1.5 The Service includes web content filtering. Customer may choose to have web content from the Internet directed through a filtering engine. Customer may choose from approximately thirty (30) different filtering categories and may create custom categories. GCI does not warrant that the web content filtering service will be one hundred percent (100%) effective.
- 1.6 The Service includes e-mail filtering. Customer may choose to have incoming e-mail messages reviewed for objectionable content and/or for computer viruses. GCI does not warrant that the e-mail filtering service will be one hundred percent (100%) effective.
- 1.7 With the Service, GCI shall provide technical support to Customer via telephone twenty-four (24) hours per day, seven (7) days per week.
- 1.8 With the Service, GCI shall provide training for Customer's technical personnel at mutually convenient times and places.

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- 1.9 The Service includes domain name service ("DNS"), dynamic host configuration protocol ("DHCP") service and network address translation ("NAT") service as required to deliver Internet access.
- 1.10 With the Service, GCI will provide non-portable Internet Protocol ("IP") addresses (which shall be relinquished back to GCI when Service is terminated).
- 1.11 Customer is solely responsible for creating, managing, editing, reviewing, deleting and otherwise controlling Customer user accounts.
- 1.12 Customer is solely responsible for creating, managing, editing, reviewing, deleting and otherwise controlling the content of messages or information in connection with the Service. GCI is acting as a passive conduit only. GCI gives Customer complete discretion over the content to be accessed or distributed in connection with the Service. GCI has no obligation, and undertakes no responsibility to determine whether any such content may give rise to liability to third parties.

2. Term and Termination

This Service Agreement is for a term of 3 (three) years, commencing on July 1, 2003, and shall automatically renew for successive periods equal in length to the initial term unless terminated. Either party may terminate this Agreement: (a) at the end of the initial term or renewal term by providing the other party with at least thirty (30) days written notice; or, (b) except as otherwise stated herein, during any initial or renewal term if the other party breaches any material term or condition of this Service Agreement and fails to cure such breach within thirty (30) days after receipt of written notice.

3. Prices

- 3.1 The rates and charges for the Service are listed in Schedule A. The Customer shall agree to pay all fees and charges listed, including all city, state or federal taxes and surcharges. GCI reserves the right to change the rates and charges for any renewal term by providing you sixty (60) days written notice in advance of the effective date of the change.
- 3.2 If the Customer terminates this Service Agreement before the end of an initial or renewal term, the Customer shall pay an early termination charge equal to fifty percent (50 %) of the amount due for the remainder of the term at the rates in effect at the time of early termination except: (a) if the Customer is depending upon funding from the Federal Communication Commission's Universal Services Program to pay for the Service and properly terminates Service in accordance with Paragraphs 12.4 and 12.5 of the General Terms and Conditions Agreement, Agreement No. SAC-08-031 due to inability to obtain such funding; (b) if the Customer terminates Service due to a material breach of this Agreement by GCI in accordance with Para. 2.b of this Agreement; or, (c) GCI terminates this Agreement for any reason not due to a breach of the Agreement by the Customer.

4. Level of Service

- 4.1 Backbone and Distribution Bandwidth. On a regular basis, GCI shall monitor its distribution bandwidth for capacity and anomalies. GCI will begin the process to

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upgrade its facilities when the following capacity usage occurs: eighty (80) percent utilization on a segment covering twenty (20) percent of any twenty-four (24) hour period for three (3) or more days in a row.

4.2 Service Interruptions. While GCI does provide proactive monitoring of Service, it shall be Customer's obligation to notify GCI of any interruption in service. GCI shall not be obligated to take any corrective action upon notice received from any source other than notice from the Customer and authorized agents. All service related contacts must be provided through the following options: e-mail to schoolaccess@gci.com, calling GCI's SchoolAccess Helpdesk at (907) 868-6375 (Anchorage, AK) or (866) 254-2858 (toll free); or other means if available.

4.3 A Service Outage is defined as a period when Customer is unable to send or receive data packets to or from the Internet due to a failure of a GCI component used to provide Service. A Service Outage Period commences when Customer reports a Service outage, as documented by GCI's trouble tracking system, until such time as GCI notifies Customer that Service has been restored.

- a. Outages of thirty (30) minutes or less will be considered a minor service outage. Three (3) minor service outages in any one (1) day will be considered a major service outage. Outages of more than thirty (30) minutes will be considered a major service outage.
- b. If GCI causes a major service outage, GCI will provide a credit in the Customer calculated as follows: three (3) percent of one (1) month Service fee. The maximum credit allowed shall be one (1) credit per day. To obtain this credit, Customer must request it in writing. GCI will apply the credit to the Customer's invoice in the month following the request.
- c. A Service Outage does not include: (a) GCI's planned maintenance as discussed further in Para. 6 below; (b) outages caused by Customer's equipment or software; (c) slow dial tone, busy circuits, any local telephone company or long distance company network failures; (d) outages on other Internet Service Provider's networks or other networks not owned or controlled by GCI; or (e) other causes beyond GCI's reasonable control.

5. Installation

- 5.1 Service shall be delivered within ten (10) working days from the time the local exchange carrier(s) provide the required local loops for the Service.
- 5.2 In locations served directly by very small aperture terminal ("VSAT"), Service shall be delivered within forty-five to sixty (45-60) days from the date the Parties sign this Service Agreement and the General Terms and Conditions Agreement. This timing, however, is based on the Customer's fulfilling its obligation to provide an adequate site for the installation of facilities. Service will not be considered fully installed until GCI has received Customer's notice of final acceptance.
- 5.3 GCI shall bill the Customer for all normal installation expenses incurred to install and terminate the circuit on the GCI provided demarcation equipment at Customer's Premises. It does not include the following items, which shall be separately invoiced: (a) any local loop installation fees including any additional time or materials that may be required to extend the circuit from the LEC termination point to the physical location where the demarcation equipment will be installed; (b) any additional costs for equipment that may be required by

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Customer that goes above and beyond the standard GCI provided demarcation equipment; (c) any travel and accommodation costs for technician(s) to/from the Service termination point in locations where applicable.

6. Maintenance Outages

GCI will conduct scheduled maintenance of its Internet platform, Services and distribution services, and will provide Customer a minimum of seventy-two (72) hours notice prior to this maintenance. These maintenance periods may cause Customer to experience brief interruptions in its Service. GCI's standard maintenance window is between 2:00 a.m. and 4:00 a.m. (Pacific Standard Time). Periodic maintenance may be conducted within the maintenance window on any day of the week without notification to Customer. For emergency repairs, GCI will use its best commercially reasonable efforts to conduct such repairs with a minimum of disruption to Customer.

7. Domain Name Registration

At Customer's request and expense, GCI shall assist in the registration of Customer's Internet domain name(s), provided that Customer represents and warrants to GCI that any name submitted to GCI and/or the domain name authority for registration, and all intellectual property rights therein, are owned exclusively by Customer, or that Customer has all necessary rights to register such name, and agrees to indemnify GCI against all losses incurred by GCI as a result of a breach of this warranty. GCI shall not be responsible for the inability to register any domain name(s).

8. Resale/Use

The Services defined herein are to be used for educational purposes and are only intended for the use of the given school/district to which this Service is being provided. Resale of any portion of these Services in part or in whole is prohibited. In addition, use of these Services for non-educational purposes or by individuals not affiliated with the Customer is also prohibited.

IN WITNESS WHEREOF, the Parties to this Agreement have executed and delivered this Agreement as of the Effective Date.

Northwest Arctic Borough School District

GCI Communication Corp.

Authorized Signature

Authorized Signature

Michael Donleavy
Printed Name

Martin Cary
Printed Name

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Distance Learning Circuit Agreement

This Agreement between GCI Communication Corp., an Alaska corporation, ("GCI") and Northwest Arctic Borough School District ("Customer") sets forth the specific terms and conditions for Distance Learning services that GCI will provide to the Customer (hereinafter, "Service Agreement"). This Service Agreement incorporates by reference the general terms and conditions set forth in GCI School Access General Terms and Conditions Agreement No. SAC-06-031. This Service Agreement is entered into as of 3rd day of February, 2003 ("Effective Date").

1. The Service

- 1.1 The distance learning circuit (the "Service") provides Customer access to the GCI distance learning network via a demand-allocated communication link. Customer may connect to its own sites, a GCI site or other sites connected to the GCI distance learning network. The Service does not include access to other sites via the Internet.
- 1.2 The Service includes on-premise, E-rate eligible Equipment in order to provide end-to-end service.
- 1.3 The Service includes synchronous distance learning components. Synchronous distance learning components include: two-way TCP/IP interactive instructional video, collaborative document review, shared electronic "whiteboard", and chat services.
- 1.4 The Service includes a classroom bridging component. The classroom bridging component provides the ability for more than one site to participate in a distance learning event.
- 1.5 The Service includes instruction scheduling component. The instruction scheduling component allows Customer to reserve classroom bridging in advance or on an ad-hoc basis. Distance learning events can be scheduled in advance using a simple, easily accessible web interface.
- 1.6 The Service includes asynchronous distance learning components. Asynchronous distance learning components include tools for: course messaging, group discussion, document sharing, syllabus presentation, submitting assignments and participant testing. The asynchronous distance learning components can be accessed on-line using a simple, easily accessible web interface.
- 1.7 With the Service, GCI shall provide technical support to Customer via telephone twenty-four (24) hours per day, seven (7) days per week.
- 1.8 With the Service, GCI shall provide Equipment familiarization for Customer's personnel at mutually convenient times and places.
- 1.9 With the Service, GCI will provide non-portable Internet Protocol ("IP") addresses (which shall be relinquished back to GCI when Service is terminated).

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- 1.10 Customer is solely responsible for creating, managing, editing, reviewing, deleting and otherwise controlling Customer user accounts.
- 1.11 Customer is solely responsible for creating, managing, editing, reviewing, deleting and otherwise controlling the content of messages or information in connection with the Service. GCI is acting as a passive conduit only. GCI gives Customer complete discretion over the content to be accessed or distributed in connection with the Service. GCI has no obligation, and undertakes no responsibility to determine whether any such content may give rise to liability to third parties.

2. Term and Termination

This Service Agreement is for a term of 3 (three) years, commencing on July 1, 2003, and shall automatically renew for successive periods equal in length to the initial term unless terminated. Either party may terminate this Agreement (a) at the end of the initial term or renewal term by providing the other party with at least thirty (30) days written notice; or, (b) except as otherwise stated herein, during any initial or renewal term if the other party breaches any material term or condition of this Service Agreement and fails to cure such breach within thirty (30) days after receipt of written notice.

3. Prices

- 3.1 The rates and charges for the Service are listed in Schedule A. The Customer shall agree to pay all fees and charges listed, including all city, state or federal taxes and surcharges. GCI reserves the right to change the rates and charges for any renewal term by providing you sixty (60) days written notice in advance of the effective date of the change, except LEC pricing which is subject to tariff changes.
- 3.2 If the Customer terminates this Service Agreement before the end of an initial or renewal term, the Customer shall pay an early termination charge equal to fifty percent (50 %) of the amount due for the remainder of the term at the rates in effect at the time of early termination except: (a) if the Customer is depending upon funding from the Federal Communication Commission's Universal Services Program to pay for the Service and properly terminates Service in accordance with Paragraphs 12.4 and 12.5 of the General Terms and Conditions Agreement, Agreement No. SAC-06-031 due to inability to obtain such funding; (b) if the Customer terminates Service due to a material breach of this Agreement by GCI in accordance with Para. 2.b of this Agreement; or, (c) GCI terminates this Agreement for any reason not due to a breach of the Agreement by the Customer.

4. Level of Service

- 4.1 Network Capacity. On a regular basis, GCI shall monitor its backbone bandwidth for capacity and anomalies. GCI will begin the process to upgrade its facilities when the following capacity usage occurs: eighty (80) percent utilization on a segment covering twenty (20) percent of any twenty-four (24) hour period for three (3) or more days in a row.
- 4.2 Service Interruptions. While GCI does provide proactive monitoring of Services, it shall be Customer's obligation to notify GCI of any interruption in service. GCI shall

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not be obligated to take any corrective action upon notice received from any source other than notice from the Customer and authorized agents. All service related contacts must be provided through the following options: e-mail to schoolaccess@gci.com; calling GCI's SchoolAccess Helpdesk at (907) 868-6375 (Anchorage, AK) or (888) 254-2858 (toll free); or other means if available.

4.3 A Service Outage is defined as a period when Customer is unable to participate in an interactive session with another site on the GCI distance learning network due to a failure of a GCI component used to provide Service. A Service Outage Period commences when Customer reports a Service outage, as documented by GCI's trouble tracking system, until such time as GCI notifies Customer that Service has been restored.

- a. Outages of thirty (30) minutes or less will be considered a minor service outage. Three (3) minor service outages in any one (1) day will be considered a major service outage. Outages of more than thirty (30) minutes will be considered a major service outage.
- b. If GCI causes a major service outage, GCI will provide a credit to the Customer calculated as follows: three (3) percent of one (1) month Service fee. The maximum credit allowed shall be one (1) credit per day. To obtain this credit, Customer must request it in writing. GCI will apply the credit to the Customer's invoice in the month following the request.
- c. A Service Outage does not include: (a) GCI's planned maintenance as discussed further in Para. 8 below; (b) outages caused by Customer's equipment or software; (c) any local telephone company or long distance company network failures; (d) outages on the Internet, other distance learning networks or other networks not owned or controlled by GCI; or (e) other causes beyond GCI's reasonable control.

5. Installation

- 5.1 Service shall be delivered within ten (10) working days from the time the local exchange carrier(s) provide the required local loops for the Service.
- 5.2 In locations served directly by very small aperture terminal ("VSAT"), Service shall be delivered within forty-five to sixty (45-60) days from the date the Parties sign this Service Agreement and the General Terms and Conditions Agreement. This timing, however, is based on the Customer's fulfilling its obligation to provide an adequate site for the installation of facilities. Service will not be considered fully installed until GCI has received Customer's notice of final acceptance.
- 5.3 GCI shall bill the Customer for all normal installation expenses incurred to install and terminate the circuit on the GCI provided demarcation equipment at Customer's Premises. It does not include the following items, which shall be separately invoiced: (a) any local loop installation fees including any additional time or materials that may be required to extend the circuit from the LEC termination point to the physical location where the demarcation equipment will be installed; (b) any additional costs for equipment that may be required by Customer that goes above and beyond the standard GCI provided demarcation equipment; (c) any travel and accommodation costs for technician(s) to fulfill the Service termination point in locations where applicable.

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6. Maintenance Outages

GCI will conduct scheduled maintenance of its distance learning network, Services and distribution services, and will provide Customer a minimum of seventy-two (72) hours notice prior to this maintenance. These maintenance periods may cause Customer to experience brief interruptions in its Service. GCI's standard maintenance window is between 2:00 a.m. and 4:00 a.m. (Pacific Standard Time). Periodic maintenance may be conducted within the maintenance window on any day of the week without notification to Customer. For emergency repairs, GCI will use its best commercially reasonable efforts to conduct such repairs with a minimum of disruption to Customer.

7. Resale/Use

The Services defined herein are to be used for educational purposes and are only intended for the use of the given school/district to which this Service is being provided. Resale of any portion of these Services in part or in whole is prohibited. In addition, use of these Services for non-educational purposes or by individuals not affiliated with the Customer is also prohibited.

IN WITNESS WHEREOF, the Parties to this Agreement have executed and delivered this Agreement as of the Effective Date.

Northwest Arctic Borough School District GCI Communication Corp.


Authorized Signature

Michael Duxbury
Printed Name


Authorized Signature

Martin Cary
Printed Name

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GCI SchoolAccess™ General Terms And Conditions

SAC 06-031

This Agreement (SAC-06-031) between GCI Communication Corp., an Alaska corporation, ("GCI") and Northwest Arctic Borough School District, an Alaskan School District ("Customer") sets forth the general terms and conditions governing GCI's provision of telecommunications, Internet or other specified services to the Customer, which are more specifically described in and defined by the related Service Agreements. This Agreement is entered into as of 3rd day of February, 2003 ("Effective Date").

1. Definitions

- 1.1 "Equipment" means devices and associated hardware installed by GCI on Customer's Premises to provide Service(s) to the Customer.
- 1.2 "Installation Charge" means a nonrecurring charge related to the installation of one or more Services.
- 1.3 "Monthly Recurring Charge (MRC)" means a recurring charge related to the continued operation of one or more Service(s).
- 1.4 "Parties" means Customer and GCI together.
- 1.5 "Party" means Customer or GCI.
- 1.6 "Premises" means Customer's location(s) that is (are) suitable for the installation and use of Equipment to provide telecommunications, Internet, or other services.
- 1.7 "Service(s)" means one or more of the telecommunication and/or Internet services that GCI will provide to the Customer for primary, middle or secondary schools under the SchoolAccess™ brand name.
- 1.8 "Service Agreement" means any agreement between GCI and the Customer for the provision of Service(s), which incorporates by reference the general terms and conditions of the Agreement herein.
- 1.9 "Software" means the software and firmware incorporated into any Equipment used or provided by GCI, and any part of the GCI network, to provide Service(s) to the Customer.
- 1.10 "Unauthorized Purpose" means (a) obtaining access to or use of the Service(s) with intent to avoid payment, in whole or in part, of charges due, (b) access to, use of, alteration of, or destruction of the data files, programs, procedures, or information associated with the Equipment, Software or Service, (c) use of the Equipment or the Service which causes or contributes to any malfunction or outage, or (d) use of the Equipment or the Service for any purpose or in any manner which, directly or indirectly, violates the law or aids in any unlawful act or undertaking.
- 1.11 "USF Discount(s)" means the different levels of funding that eligible schools and libraries may receive on eligible telecommunication services through the Federal Communication Commission's Schools and Libraries Program. This program is administered by the Schools and Libraries Division of the Universal Service Administrative Company.

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2. Other Definitions

Other terms used in this Agreement are defined in the context in which they are used and shall have the respective meanings there indicated. Additionally, the Service Agreements between GCI and the Customer may include definitions and those will control in the event there is a conflict between this Agreement and a Service Agreement.

3. GCI Responsibilities

- 3.1 GCI shall provide, operate and maintain the Service(s) set forth in and further defined by any Service Agreement between GCI and the Customer.
- 3.2 GCI shall obtain and maintain all permits, licenses, or certificates required of it by any regulatory body to provide the Service. The provision of such Service shall be conditional upon the obtaining of all such necessary approvals.

4. Customer Responsibilities

- 4.1 Customer shall at its own expense be responsible for preparing and providing a site at its Premises that is suitable for GCI to install the Equipment. Additionally, Customer shall give GCI and its agents reasonable access to its Premises at all reasonable times to install, operate and maintain the Equipment.
- 4.2 Customer shall track the physical location of Equipment GCI installs at the Customer's Premises, and, upon request, report such locations to GCI.
- 4.3 Customer shall be responsible for complying with the relevant terms and conditions of Internet use that apply, which will depend upon the Customer's selection of an Internet Service Provider ("ISP"). If GCI is the chosen ISP, GCI's terms and conditions are set forth at: <http://www.gci.net/tnc/> and are specifically incorporated herein.
- 4.4 Customer is solely responsible for the security of its own network and equipment, including without limitation, any defects (i.e. bugs or viruses) that are imported to its network or equipment through the Internet.
- 4.5 Customer shall be responsible for communicating with its own users of the Service, and for handling all complaints and trouble reports made by such users.

5. Equipment and Software

- 5.1 Services provided by GCI may require the use of Customer-owned equipment to perform functions such as a hub, switch or router. Customer-owned equipment used in connection with the Service GCI will provide must be purchased separately by the Customer and conform to industry standards. Additionally, the Customer agrees to cooperate with GCI to configure such equipment to work compatibly with GCI's Equipment to provide the Service requested by the Customer. GCI is not responsible for the installation, maintenance, or performance of any equipment or software not provided by GCI.
- 5.2 Customer acknowledges that all right, title and interest in any and all technology and intellectual property forming part of the provision of Service, including without limitation, the Software and related documentation, and the trademarks, tradenames and service marks of

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GCI are vested in GCI. Nothing in this Agreement shall give the Customer any right, title, claim or interest in GCI's Intellectual Property unless otherwise provided in the Service Agreement. In the absence of GCI prior consent, the Customer shall not use in any manner GCI's Intellectual Property.

5.3 Customer shall not use, or attempt to use, the Equipment or Service for any Unauthorized Purpose.

5.4 Title to all Equipment provided by GCI under this Agreement shall remain with GCI.

6. Service Changes

6.1 Customer may request Service upgrades and GCI will supply such upgrades to the extent they are technically feasible and practicably available. Upgrades shall be defined as an increase in transmission capability. If such upgrades require material modifications to the existing Service or Equipment, there will be additional charges. GCI will present an itemization of such additional charges to the Customer for approval prior to implementing any service upgrades. No termination charges will be assessed for Service upgrades.

6.2 Customer may also downgrade its Service to the next available lower speed. Customer may downgrade no more than one (1) time in any twelve (12) month period. If Customer disconnects service within six (6) months of downgrading the speed of the connection any applicable termination charge will be based on the connection speed immediately prior to such downgrade.

6.3 Customer may move the physical location of site where GCI is providing Service to the Customer subject to the following conditions: (a) GCI and the Customer execute a new Service Agreement to provide Service to the Customer at the new location; and (b) Customer requests GCI to install and provide Service at the new location on or prior to the disconnection date of the existing Service.

6.4 Customer must provide written notice to GCI at least thirty (30) days in advance to upgrade, downgrade or relocate Service. Additionally, the Parties agree to execute written Amendments to the relevant Service Agreement to implement such Service changes.

7. GCI'S Warranty; Customer's Sole Remedy

7.1 GCI represents and warrants that the Service it will provide to the Customer pursuant to this Agreement and relevant Service Agreement(s) shall be performed in accordance with generally accepted industry standards for services of a similar nature and that such services shall be performed by GCI employees and subcontractors who are competent and qualified to perform their responsibilities.

7.2 The Customer acknowledges that its sole and exclusive remedy for a breach of the warranty referred to in Sec. 7.1 shall be to receive a pro rata credit for the loss of service that results from such breach. These credits are more specifically defined in the relevant Service Agreements.

7.3 Disclaimer. THIS AGREEMENT AND THE RELATED SERVICE AGREEMENTS ARE FOR THE PROVISION OF SERVICES ONLY. UNLESS OTHERWISE EXPRESSLY SPECIFIED IN A SERVICE AGREEMENT, THE WARRANTY REFERRED TO IN SEC. 7.1 CONSTITUTE GCI'S ONLY WARRANTIES IN RELATION TO THE SERVICES PROVIDED BY THIS AGREEMENT AND THE RELATED SERVICE AGREEMENTS. THE CUSTOMER

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ACKNOWLEDGES THAT THE SERVICES GCI PROVIDES ARE "AS IS" AND THAT THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN RELATION TO GCI'S SERVICE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE EXCEPT AS EXPRESSLY SET FORTH IN ONE OF THE RELATED SERVICE AGREEMENTS, GCI DOES NOT WARRANT THAT ITS EQUIPMENT, SOFTWARE OR SERVICE WILL PERFORM AT A PARTICULAR SPEED OR THAT SERVICE WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.

8. Limitation of Liability

EXCEPT WITH REGARDS TO THE INDEMNITY OBLIGATION ARISING UNDER SECTION 11 IN THIS AGREEMENT AND APPLICABLE PENALTY PROVISIONS FOR EARLY TERMINATION OF SERVICE THAT ARE MORE SPECIFICALLY DEFINED IN RELEVANT SERVICE AGREEMENTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE RELATED SERVICE AGREEMENTS.

9. Force Majeure

Neither Party will be responsible for failure or delay in performing its obligations under this Agreement and the related Service Agreements if such failure or delay is due to circumstances beyond the Party's reasonable control and without the fault or negligence of the party claiming excusable delay, including without limitation, acts of any governmental body, war, sabotage, embargo, fire, flood, strike, or other labor disturbance, interruption of or delay in transportation, inability to obtain raw materials, supplies or power used in or equipment needed for provision of Service. If, as a result of the force majeure conditions, the Service is unavailable for a period of thirty (30) continuous days, either Party may terminate this Agreement and related Service Agreement with no further obligation to other Party except for Customer's obligation to pay for Services rendered prior to the date of termination.

10. Insurance and Risk of Loss

10.1 Where this Agreement or a Service Agreement requires performance by the employees of GCI or the Customer, the performing Party shall carry and maintain adequate employer's liability insurance covering its employees engaged in such performance. Further, each Party shall carry such other insurance coverage, including without limitation, comprehensive general liability and errors and omissions or professional liability insurance coverage, in such amounts and against such risks as a normally prudent person in the same or similar business or industry would consider appropriate.

10.2 GCI shall be responsible for the risk of loss, damage, or destruction of the Equipment provided by GCI for the provision of Service apart from the loss, damage or destruction to such Equipment caused by the negligence or willful misconduct of the Customer, its employees, agents or users.

11. Indemnities

11.1 Indemnification by GCI

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- (i) GCI shall indemnify and hold harmless the Customer from any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative) and all related costs and expenses (including all reasonable legal fees and reasonable costs of investigation, litigation, settlement and judgment) (collectively, "Damages") threatened, asserted, or filed by a third party against the Customer or arising out of or relating to the injury or death of any individual or the loss or damage to real property, in each case, resulting from the willful misconduct or negligent acts or omissions of GCI, its agents or employees.
- (ii) GCI at its own expense and at the Customer's request shall defend or settle any actual or threatened claim to the extent that it is based upon a claim that the use of the Software provided by GCI infringes any United States patent, or any trademark, copyright or trade secret of a third party enforceable in the United States (an "IP Infringement Claim") and shall indemnify the Customer and hold it harmless against all Damages arising out of the foregoing.
- (iii) GCI shall have no obligation or liability for any IP Infringement Claim to the extent such action is based on (a) the manufacture, distribution, or use of the Software in violation of this Agreement or a Service Agreement; or (b) the adaptation or modification of any portion of the Software other than by GCI and its agents. The rights and remedies granted to the Customer under Section 11.1(ii) constitute the Customer's sole and exclusive remedy against GCI, officers, agents and employees for any and all claims of infringement of intellectual property rights arising in connection with the Service and the Software.

11.2 Indemnification by Customer

The Customer shall indemnify and hold harmless GCI from any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative) and all related costs and expenses (including all reasonable legal fees and reasonable costs of investigation, litigation, settlement and judgment) (collectively, "Damages") threatened, asserted, or filed by a third party against GCI or arising out of or relating to the injury or death of any individual or the loss or damage to real or personal property, in each case, resulting from the willful misconduct or negligent acts or omissions of the Customer, its agents, employees or users.

11.3 Indemnity Procedures

In the event of a third party claim with respect to which a Party is entitled to indemnification under this Agreement, such Party ("Indemnified Party") shall notify the other Party ("Indemnifying Party") in writing as soon as practicable; provided that any delay in giving such notice shall not preclude the Indemnified Party from seeking indemnification hereunder to the extent such delay has not materially prejudiced the Indemnifying Party's ability to defend such claim. The Indemnified Party shall have the right to resist and dispose of such claim in such manner as it reasonably deems appropriate; provided however, that the Indemnifying Party (or its insurer) shall have the right to assume the defense thereof, including but not limited to, the employment of counsel of its own choosing reasonably satisfactory to the Indemnified Party and payment of all expenses in connection therewith. The Indemnifying Party shall be responsible for and shall reimburse the Indemnified Party for any reasonable costs or expenses incurred by the Indemnified Party prior to the time that the Indemnifying Party assumes the defense of the claim. The Indemnified Party shall reasonably cooperate with the Indemnifying Party in the defense and/or settlement of the claim; provided, however, that if a conflict of interest exists vis-a-vis the interests of the Indemnifying Party and the Indemnified Party, or the Indemnifying Party fail to diligently and promptly defend

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the Indemnified Party, the Indemnified Party shall be entitled to defend the claim with counsel of its own choosing at the expense of the Indemnifying Party. Upon the assumption by the Indemnifying Party of the defense of the claim:

- (i) If there is a reasonable probability that a settlement or compromise of the claim may adversely affect the Indemnified Party, the Indemnifying Party shall not settle or compromise such claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed; and
- (ii) If the facts giving rise to the indemnification or defense hereunder shall involve a possible claim by the Indemnified Party against a third party, the Indemnified Party shall have the right, at its own cost and expense, to undertake the prosecution, compromise and settlement of such claim.

12. Billing and Payment

- 12.1 GCI shall begin billing Customer for Services after (a) Service has been fully installed and tested; (b) Customer has given GCI notice of acceptance; and (c) the Service is available for Customer use.
- 12.2 Unless otherwise specified in a Service Agreement, GCI shall invoice Customer monthly for all Services, and payment for Services shall be due within thirty (30) days from the date of the invoice. Unpaid balances shall accrue interest at the rate of one and one-half percent (1 1/2%) per month until paid, plus GCI's reasonable cost of collection, including attorneys' fees and costs.
- 12.3 Unless otherwise specified in a Service Agreement, invoices that remain unpaid for more than 60 days are grounds that would allow GCI to terminate Service with the Customer. Termination of Service under these circumstances would not relieve the Customer of the obligation to pay for past due amounts and all other obligations that may exist under any applicable Service Agreement.
- 12.4 If the Customer is relying on funding from the Universal Services Program to pay for the Service, the Customer agrees that it shall use all reasonable and lawful means to obtain such funding under the Universal Services Program, including applying for such funding in a timely manner and requesting sufficient funds to cover the costs of Service. If the Customer fails to comply with the applicable rules for requesting such funding, the Customer shall be obligated to pay to GCI for the full amount of the Service.
- 12.5 Unless otherwise specified in a Service Agreement, the Customer may terminate Service, in whole or in part, if the Customer is denied funding from the Universal Services Program for reasons other than noncompliance with the relevant rules for applying for such funds. Under such circumstances, the Customer shall provide not less than thirty (30) days written notice of termination. Additionally, upon termination, the Customer shall remain liable for its portion of the Service, as applied for, that is not funded through the Universal Services Program and shall remit all such amounts to GCI that are outstanding prior to termination.
- 12.6 Unless otherwise specified in a Service Agreement, the Customer is always liable for the portion of the Service that is not funded through the Universal Services Program and must remit such amounts to GCI on a timely basis each month.
- 12.7 Unless otherwise specified in a Service Agreement, if the Customer disputes any amount of the monthly invoice, the Customer must pay such amounts that are not disputed in a timely manner and provide GCI with a written request for billing adjustment along with all supporting documentation on the disputed amount.

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13. Dispute Resolution

Any dispute, controversy or claim concerning this Agreement and a Service Agreement shall be resolved in the following manner:

(a) Negotiation. In the event of a controversy or claim arising out of or relating to this Agreement or a Service Agreement, the Parties shall first seek to resolve such dispute through negotiation. The Parties shall each appoint a representative, who shall promptly confer, either in person or by telephone, in an effort to resolve the dispute. If, following thirty (30) days of negotiation the representatives are unable to resolve the dispute, either Party may then refer such dispute to mediation in accordance with paragraph (b) below.

(b) Mediation. If the Parties have not been successful in resolving a dispute through negotiation, the Parties agree to resolve the dispute through mediation by submitting the dispute to a sole mediator selected by the Parties or, at any time at the option of a Party, to mediation by the American Arbitration Association. The mediation shall be conducted in Anchorage, Alaska. Each Party shall bear its own expenses and an equal share of the expenses of the mediator and the fees of the American Arbitration Association. Nothing in this clause shall be construed to preclude any Party from seeking injunctive relief in order to protect its rights pending mediation.

(c) Final Resolution. Any controversy or claim arising out of or relating to this Agreement or a Service Agreement that has not been resolved through negotiation or mediation shall be resolved in a court of law in accordance with Section 17.6.

(d) Continued Performance. Except where clearly prevented by a dispute arising under this Section, the Parties shall continue performing their respective duties, obligation and responsibilities under this Agreement or Service Agreement, while the dispute is being resolved in accordance with this Section unless and until such obligations are lawfully terminated or expire in accordance with the provisions hereof.

14. Severability

If any portion of this Agreement or a Service Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect.

15. Waiver

Either Party's failure to insist upon or enforce strict performance of any provision of the Agreement or a Service Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between Parties nor trade practice shall act to modify any provision of this Agreement or a Service Agreement.

16. Right to Modify Agreement or Service Agreement

Unless otherwise specified in a Service Agreement, GCI reserves the right to modify this Agreement and/or a Service Agreement as circumstances may warrant. GCI will provide the Customer with a written notice at least thirty (30) days prior to implementing any such changes. If the Customer objects to the proposed changes, then the Customer may terminate this Agreement and the Service Agreement by written notice to GCI within thirty (30) days of the date of the

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notice of proposed changes provided that termination is related to the Customer's objection to the proposed changes. If Customer fails to contact GCI regarding the proposed changes within thirty (30) days from the notice date, then the proposed changes will be deemed approved by the Parties take effect from the date such changes are implemented.

17. Miscellaneous

- 17.1 This Agreement and related Service Agreements constitute the complete agreement between the Parties and supersedes all prior understandings or arrangements between them regarding the subject matter of this Agreement and the Service Agreement. Where there is a conflict between the terms of this Agreement and a Service Agreement, the latter shall govern. This Agreement and the Service Agreement may not be amended or modified except in writing signed by an authorized representative of each of the Parties.
- 17.2 Neither Party shall assign its rights or obligations under this Agreement or related Service Agreement without the prior written consent of the other Party; provided, however, that either Party may assign all or part of its rights or obligations to an entity that controls, is controlled by or is under common control with the assigning Party, or to any successor in interest without the prior written consent of the other Party. Subject to the foregoing, this Agreement and related Service Agreements shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns.
- 17.3 Notices under this Agreement and related Service Agreement shall be in writing and shall be deemed given when delivered personally or by e-mail (with confirmation of receipt) or conventional mail (registered or certified, postage prepaid with return receipt requested). Notices shall be addressed to the Parties at the addresses appearing in the signature block below, but each Party may change the address by written notice in accordance with this paragraph.
- 17.4 It is the explicit intention of the Parties hereto that no person or entity other than the Parties is or shall be entitled to bring any action to enforce any provision of this Agreement or Service Agreement against either of the Parties, and the covenants, undertakings, and agreements in this Agreement and Service Agreements shall solely be for the benefit of and shall be enforceable only by the Parties hereto or their respective successors and assigns as permitted hereunder.
- 17.5 Nothing in this Agreement and Service Agreements shall be construed to constitute GCI and the Customer in the relationship of an employer-employee, principal-agent, partners or joint ventures or as anything other than a contract for service performed by GCI for the Customer. Neither Party shall have the authority to make any representations, claims, and warranties of any kind on behalf of the other Party. Under no circumstances shall any employee of one Party be deemed to be the employee of the other for any purpose.
- 17.6 This Agreement shall be governed by and construed under the laws of the State of Alaska. The Parties hereby submit to the personal jurisdiction of, and agree that any legal proceeding with respect to or arising under this Agreement and/or a Service Agreement will be brought in the state and federal courts sitting in Anchorage, Alaska. The Parties acknowledge that the aforesaid courts shall have exclusive jurisdiction over this Agreement and/or a Service Agreement, and specifically waive any claims which they may have that involve jurisdiction or venue, including but not limited to forum non conveniens.
- 17.7 Unless otherwise provided in this Agreement or Service Agreement, all rights and remedies of the Parties, in law or equity, are cumulative and may be exercised concurrently or separately. The exercise of one remedy will not be an election of that

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remedy to the exclusion of other remedies unless provided otherwise in this Agreement or Service Agreement.

IN WITNESS WHEREOF, the Parties to this Agreement have executed and delivered this Agreement as of the Effective Date.

Northwest Arctic Borough School
District

GCI Communication Corp.

Authorized Signature

Authorized Signature

Michael D'Amico
Printed Name

Martin Cary
Printed Name

Superintendent
Title

Vice President - Broadband Services
Title

2/3/03
Date

Feb. 3, 03
Date

Attention: Corporate Counsel
GCI Communication Corp
2550 Denali Street, Suite 1000
Anchorage, AK 99503
Fax: (907) 285-5676

Address for Notices

Address for Notices

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